

AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions and listings of claims in the application:

LISTING OF CLAIMS:

1-19. (cancelled).

20. (currently amended): A promoter comprising at least one of each of the following elements (i)-(ix), or functional fragments thereof, in the 5' to 3' direction:

- (i) domain II which comprises at least one member selected from the group consisting of subdomain II (a), subdomain II (b), subdomain II (c), subdomain II (d) and domain III, wherein subdomain II (a) is SEQ ID NO: 7, ~~or subdomain II (a) is a functional sequence with at least 50% sequence identity to SEQ ID NO: 7 and activates transcription;~~
- (ii) domain I, which comprises at least one member selected from the group consisting of subdomain I (a), subdomain I (b), and subdomain I (c), wherein subdomain I (a) is SEQ ID NO: 18, ~~or subdomain I (a) is a functional sequence with at least 75% sequence identity to SEQ ID NO: 18 and activates transcription;~~
- (iii) minimal domain (b), wherein minimal domain (b) is SEQ ID NO: 5, ~~or minimal domain (b) is a functional sequence with at least 75% sequence identity to SEQ ID NO: 5 and activates transcription;~~
- (iv) minimal domain (a), wherein minimal domain (a) is SEQ ID NO: 2, ~~or minimal domain (a) is a functional sequence at least 75% homologous to SEQ ID NO: 2 and activates transcription;~~

(v) region between minimal promoter (a) and a transcription start site, wherein said region between minimal promoter (a) and said transcription start site is SEQ ID NO: 12, or ~~said region between minimal promoter (a) and the transcription start site is a sequence with at least 75% sequence identity to SEQ ID NO: 12;~~

(vi) transcription start site, wherein said transcription start site is SEQ ID NO: 4, or ~~said transcription start site is a functional sequence with at least 50% sequence identity to SEQ ID NO: 4 and activates transcription;~~

(vii) 5' untranslated leader region, wherein said 5' untranslated leader region is SEQ ID NO: 13, or ~~said 5' untranslated leader region is a sequence with at least 75% sequence identity to SEQ ID NO: 13;~~

(viii) translational initiation codon, wherein said translational initiation codon is SEQ ID NO: 14, or ~~said translational initiation codon is a sequence with at least 75% sequence identity to SEQ ID NO: 14; and~~

(ix) a polynucleotide encoding the amino acid sequence set forth in SEQ ID NO. 16.

21-38. (canceled).

39. (withdrawn): A method for testing the level of expression of a polynucleotide, comprising:

a) transforming a plant protoplast with a test construct, wherein said test construct comprises a polynucleotide encoding a target or reporter polypeptide operably

linked with the 3' end of the promoter of claim 20 and wherein said polynucleotide is in frame with SEQ ID NO:16 of said promoter,

- b) performing a transient GUS assay using the transformed plant protoplast of (a), and
- (c) comparing the assay results of (b) with results from a transient GUS assay performed using a plant protoplast transformed with a control construct, wherein said control construct comprises said polynucleotide encoding a target or reporter polypeptide of (a) operably linked with a CaMV 35S promoter, thereby testing the level of expression of a polynucleotide.

40. (withdrawn): The method of claim 39, wherein said plant protoplast is a protoplast selected from the group consisting of a tobacco protoplast , a cotton protoplast, a cabbage protoplast and a potato protoplast.

41. (withdrawn): The method of claim 39, wherein the protoplast is derived from a plant tissue.

42. (withdrawn): The method of claim 41, wherein the plant tissue is a plant tissue selected from the group consisting of a root, shoot, leaf and storage tissue.

43. (withdrawn): The method of claim 39, wherein the polynucleotide encoding a target or reporter polypeptide is *uidA*.

44. (withdrawn): The method of claim 39 wherein said transformation is performed using polyethylene glycol-mediated transformation or biolistic-mediated transformation.

45-52. (canceled).